

Rosario Marinello

Plaintiff

vs.

Case # C 08-0664-JW

**OPPOSITION TO DEFENDANTS MOTION
FOR DISMISSAL**

Department of Corrections and
Rehabilitation

Defendant

Initial Case Management Conference: June 23rd, 2008 at 9:00 AM, Courtroom: 8, Judge: Hon.
James Ware.

Service: Certified Mail May 9th, 2008: Certificate of Service, Notice of Defendants Motion
to Dismiss the Complaint, Clerks Notice Continuing Case Management Conference.

Certified Mail: # 5057 6516 October 10th, 2007 EEOC Charge #556200700924

Facts:

Filing Deadline for EEOC charge set forth under Title VII is 90 days. Because the EEOC
would not be able to investigate the charge within 180 days of filing, I was given a NOTICE
OF RIGHT TO SUE WITHIN 90 DAYS. The date of the notice is October 10th, 2007. The
90 day deadline is approximately January 10th, 2008. Exhibit 1a: Letter from Department of
Justice Dated October 10th, 2007.

The initial Complaint per letter dated October 10th, 2007 was filed at 2:56 p.m. on December
31st, 2007 at the Clerks office in the US District Court Northern District of California San
Francisco. I inquired with the clerk on duty at the time as to the case number to be used for
the filing. Her response was to keep the old case # C 07-1117 BZ and file it as-is. Exhibit 2a:
Original Employment Discrimination Complaint filed December 31st, 2007.

FILED
MAY 23 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

Complaint # C 08-0664-JW was filed on January 25th, 2008. It was originally assigned as Case # C 08-0664-EDL at the US District Court Northern District of California San Francisco. My application to proceed in Forma Pauperis for Case # C-08-0664-EDL was also filed on January 25th, 2008, and thereby granted on February 26th, 2008. The complaint was not amended from the one filed on December 31st, 2007. On April 15th, 2008 it was reassigned to the US District Court Northern District of California in Oakland and changed to Case # C 08-0664 CW per Order of Transfer. It was further reassigned as Case # C 08-0664-JW scheduled for Case Management Conference on June 23rd, 2008 at 10:00 a.m. The location is at the US District Court Northern District of California San Jose, Courtroom 8.

The State Personnel Board Appeal, Case # 07-6039N, was filed on November 28th, 2007. As of today, May 21st, 2008, I have not heard a response from the SPB. Exhibit 3a: Letter from California State Personnel Board Dated February 15th, 2008. / Cover Letter of Appeal Dated November 26th, 2007.

Legal Issues:

- 1) Right to institute a legal action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq. against the named respondent. (See exhibit 1a)
- 2) Federal Rules of Civil Procedure 12(b) (6)
- 3) California State Personnel Board Appeal Process concerning time constraints.

Summary:

I did file a valid complaint with the intent to institute a legal action according to Title VII of the Civil Rights Act, the EEOC, and the Department of Justice. It was filed in my presence on December 31st, 2007. This is within the 90 day deadline. The case was re-filed on January 25th, 2008 without a case number pending assignment to a Judge. I did not amend the complaint from the original December 31st, 2007 filing. Case # C 07-1117 BZ was dismissed on 12/20/2007. This was due to my not being able to meet the deadline for the filing fee.

The EEOC charges in the later case, C-08-0664-EDL, are new charges. Case # C 07 -1117 BZ was filed on February 23rd, 2007. The specific acts leading to the October 10th, 2007 Right to Sue Notice occurred after May 1st, 2007. Thus the case was properly filed and the complaint is valid according to Title VII.

I have also concurrently filed an appeal with the State Personnel Board on the same matter. The appeal, Case # 07-6039N, was filed on November 28th, 2007. As of today, May 21st, 2008, I have not heard a response from the SPB. According to Government Codes concerning State Personnel Board appeals, an appeal must be completed with a decision within six months of the filing date. (see exhibit 3a)

For the foregoing reasons I the Plaintiff, Rosario Marinello, request that this court not dismiss Case # C 08-0664-JW and proceed as scheduled.

I declare under penalty of Perjury under the laws of the State of California the foregoing is true and correct.

Rosario Marinello

Plaintiff

Rosario Marinello 5/21/08

Signature

Exhibit 1a



U.S. Department of Justice

Civil Rights Division

NOTICE OF RIGHT TO SUE
WITHIN 90 DAYS

CERTIFIED MAIL
5057 6516

950 Pennsylvania Avenue, N.W.
Karen Ferguson, EMP, PHB, Room 4239
Washington, DC 20530

Mr. Rosario Marinello
266 Reservation Rd., #F-232
Marina, CA 93933

October 10, 2007

Re: EEOC Charge Against State of California, Dept. of Corrections
No. 556200700924

Dear Mr. Marinello:

Because you filed the above charge with the Equal Employment Opportunity Commission, and the Commission has determined that it will not be able to investigate and conciliate that charge within 180 days of the date the Commission assumed jurisdiction over the charge and the Department has determined that it will not file any lawsuit(s) based thereon within that time, and because you have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., against the above-named respondent.

If you choose to commence a civil action, such suit must be filed in the appropriate Court within 90 days of your receipt of this Notice. If you cannot afford or are unable to retain an attorney to represent you, the Court may, at its discretion, assist you in obtaining an attorney. If you plan to ask the Court to help you find an attorney, you must make this request of the Court in the form and manner it requires. Your request to the Court should be made well before the end of the time period mentioned above. A request for representation does not relieve you of the obligation to file suit within this 90-day period.

This Notice should not be taken to mean that the Department of Justice has made a judgment as to whether or not your case is meritorious.

Sincerely,

Rena J. Comisac
Acting Assistant Attorney General
Civil Rights Division

by

A handwritten signature in cursive script, reading "Karen L. Ferguson", is written over the typed name.

Karen L. Ferguson
Supervisory Civil Rights Analyst
Employment Litigation Section

cc: San Jose Local Office, EEOC
State of California, Dept. of Corrections

Exhibit 2a

RECEIVED
07 DEC 31 PM 2:56
RICHARD H. WILKINS
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Rosario Marinello

Plaintiff,

vs.

California Department of Corrections and
Rehabilitation

Defendant(s).

CASE NO. C07-1117 BZ

**EMPLOYMENT DISCRIMINATION
COMPLAINT**

1. Plaintiff resides at:

Address 324 Hawthorne

City, State & Zip Code Salinas, CA 93901

Phone (831) 915-5332

2. Defendant is located at:

Address PO BOX 1020

City, State & Zip Code Soledad, CA 93960

3. This action is brought pursuant to Title VII of the Civil Rights Act of 1964 for employment discrimination. Jurisdiction is conferred on this Court by 42 U.S.C. Section 2000e-5. Equitable and other relief is sought under 42 U.S.C. Section 2000e-5(g).

4. The acts complained of in this suit concern:

a. ☐ Failure to employ me.

b. ☐ Termination of my employment.

1 c. ☒ Failure to promote me.

2 d. ☒ Other acts as specified below.

3 1) Removal from a Promotional List. 2) Not being allowed to reinstate into a job position.

4 3) False allegations resulting in invasion of interest in my reputation, and disruption of my ability
5 to conduct business in my occupation or other fields within my background, education, and skill sets.

6
7
8
9 5. Defendant's conduct is discriminatory with respect to the following:

10 a. ☐ My race or color.

11 b. ☐ My religion.

12 c. ☐ My sex.

13 d. ☐ My national origin.

14 e. ☒ Other as specified below.

15
16 6. The basic facts surrounding my claim of discrimination are:

17 Retaliation for engaging in protective activities, in violation of the Title VII of the

18 Civil Rights Act of 1964, as amended. The basic facts supporting my claim are:

19 1) Incorrect information was negatively interpreted in my promotional Background Investigation
20 resulting in a Withhold placement from the CCI Promotional list around May 10th, 2007.

21 2) I was not allowed to reinstate in my former position as an M&SSI when requesting on May 31st, 2007,
22 and July 30th, 2007. I was informed by the Chief Deputy Warden at Salinas Valley State Prison the reason was
23 my being the subject of an Internal Affairs investigation that initiated on June 28th, 2006.

24 I explained to an Investigator on September 6th, 2006 that the Allegations are False.

25 7. The alleged discrimination occurred on or about May, 10th 2007.

26 (DATE)

27 8. I filed charges with the Federal Equal Employment Opportunity Commission (or the
28 California Department of Fair Employment and Housing) regarding defendant's alleged

discriminatory conduct on or about September, 4th 2007.

(DATE)

9. The Equal Employment Opportunity Commission issued a Notice-of-Right-to-Sue letter (copy attached), which was received by me on or about October 10th, 2007.

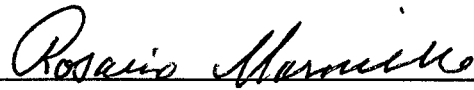
(DATE)

10. Plaintiff hereby demands a jury for all claims for which a jury is permitted:

Yes _____ No ✓

11. WHEREFORE, plaintiff prays that the Court grant such relief as may be appropriate, including injunctive orders, damages, costs, and attorney fees.

DATED: 12/31/07



SIGNATURE OF PLAINTIFF

(PLEASE NOTE: NOTARIZATION
IS NOT REQUIRED.)

Rosario Marinello

PLAINTIFF'S NAME

(Printed or Typed)

Exhibit 3a



CALIFORNIA STATE PERSONNEL BOARD

801 Capitol Mall • Sacramento, California 95814 • www.spb.ca.gov

ARNOLD SCHWARZENEGGER, Governor



February 15, 2008

Rosario Marinello
266 Reservation Rd., #F-232
Marina, CA 93933

Personnel Officer:

Corrections/Directorate
1515 S Street - 522 NorthAttn: Personnel
Sacramento, CA 95814

Appellant's Representative:

Class Title: Correctional Officer
Appeal Type: Examination

Dear Rosario Marinello:

Case No. 07-6039N

Your letter has been received by the Appeals Division and is pending preliminary review to determine State Personnel Board jurisdiction for your concerns. The Appeals Division may accept, for non-evidentiary processing, appeals alleging violation of any law or rule governing the California State civil service merit system (e.g. examinations, withholds from certification, psychological screening and medical disqualification, reasonable accommodation, discrimination) as well as requests to file charges and whistleblower retaliation complaints.

For most appeals, Government Code provides that the period from the filing of an appeal to the decision of the board shall not exceed six months. Because of the high volume of appeals we receive it will be approximately 30 days before your appeal will be assigned to staff for full consideration of your concerns. After that time, staff will be available to respond to specific questions about the status of your appeal.

If you have questions about your appeal, you may contact us at (916) 653-0799. If we need additional information from you, we will write to you at the above address. Please notify us in writing of any corrections or changes to your name or address. The Board will give careful consideration to any information that you provide us regarding your appeal.

You will receive a written decision from the Board stating the final outcome and the reasons for the decision. Please be assured that we take every measure to process all appeals in an expeditious, fair, and timely manner.

Enclosed is a copy of the Appeals Division "General Information" brochure for your information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tereza Majkovic'.

Tereza Majkovic
Appeals Division

Enclosure (Appellant only)



Rosario Marinello
266 Reservation Rd. # F-232
Marina Ca. 93933
(831) 915-5332 (831)633-4459

11/26/07

California State Personnel Board
Appeals Division
801 Capital Mall
Sacramento, CA. 95814

Re: Appeal of Permanent Withhold

Response to BI Unit Confidential Information Transmittal

The following information is on behalf of my appeal to remove the permanent withhold placed on the current Correctional Counselor I Eligibility list. I can provide reference letters from Supervisors or Staff members of The Department of Corrections & Rehabilitation or Personal history references.

Sincerely,

A handwritten signature in black ink, appearing to read "Rosario Marinello", written in a cursive style.

Rosario Marinello